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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

WAYLON PITCHFORD (14),

Defendant.

Case № 1:20-cr-00238-JLT-SKO

**MOTION TO RECONSIDER MOTION  
TO APPOINT NUNC PRO TUNC CJA  
LEARNED COUNSEL -  
POTENTIAL DEATH PENALTY  
PROSECUTION**

The Federal Defender – California Eastern, in its roles as a member of the CJA Panel Selection Committee and finding appointed counsel for individuals requiring legal consultation and representation, pursuant to 18 U.S.C. §§ 3005, 3006A and 3599 (counsel appointments in potential death penalty case) and considering Local Rule 180(b)(2) and General Order 663 *CJA Plan* § XV.C.1.g (CJA appointments and *pro hac vice* appearance), moves this Court to reconsider appointing Oliver Loewy now as Defendant WAYLON PITCHFORD’s learned counsel *nunc pro tunc* to October 27, 2023, based upon following:

1. On November 9, 2023, this Court granted the Federal Defender’s initial appointment motion (Dkt. to add Oliver Loewy as learned counsel for Defender Waylon Pitchford “effective as of the Federal Defender meeting with Mr. Loewy *after the filing of a Superseding Indictment alleging death penalty eligible charges against the Defendant.*” Dkt. 843.

2. The Federal Defender originally requested *nunc pro tunc* appointment effective as of her first October 27, 2023 meeting with Mr. Loewy discussing the case. The Defender moved for learned counsel appointment after the Government planned to charge Mr. Pitchford through a *3<sup>rd</sup> Superseding Indictment* to allege at least two death-eligible counts against him for the

1 murders of Victims 3 and 5 as set out under Count 1 - Conspiracy, paragraphs 20(b) and (c). Dkt.  
2 \*.

3 3. Since the Court's *Order*, the Defender asked Assistant U.S. Attorney Stephanie  
4 Stokman about the Government's charging plans. Ms. Stokman replied, "

5 I am unsure when we will have an answer from capital crimes [at DOJ] but I hope  
6 by February/march [sic] or sooner. We plan to submit (pending issues that may  
7 arise) in December. I think we can likely hold off on learned counsel for now but  
8 will leave that to your discretion.

9 4. The Defender is a death-qualified lawyer. In her experience, the sooner learned  
10 counsel is appointed the more effective, better and just results occur because:

- 11 a. it can take time to build a trusting client relationship where the client discloses  
12 information of incredibly personal and hurtful memories and information vital to  
13 establishing mitigation to counter seeking or imposing death;  
14 b. the sooner mitigation investigations, research and briefing can begin, the better  
15 for the client because family and witness memories continue to fade. Sometimes,  
16 family and witnesses become incapacitated and die; and  
17 c. records can be lost or destroyed when these appointments and work are delayed.

18 5. Our District's *CJA Plan* (General Order 671, 10.31.23) recognizes the importance of  
19 early learned counsel appointments at Section XV *Appointment of Counsel and Case*  
20 *Management in Capital Case*,

21 a. Subsection B **General Applicability and Appointment of Counsel**

22 **Requirements:**

- 23 i. at ¶1: Appointments apply to "Such matters . . . in which the death penalty  
24 may be or is being sought by the prosecution,"  
25 ii. at ¶3: "Qualified counsel must be appointed in capital cases at the earliest  
26 possible opportunity."

27 b. Subsection C **Appointing Trial Counsel in Federal Death-Eligible Cases:**

- 28 i. at ¶1.b: "To protect the rights of an individual who, although uncharged, is  
the subject of a federal death-eligible case investigation, the Court may


1 appoint capital-qualified counsel upon request, consistent with Sections C.1,  
2 2, and 3 of this Plan.”

3 ii. At ¶1.d: “When appointing counsel, the Court must consider the  
4 recommendation of the Federal Defender or their designee, who will consult  
5 with Federal Death Penalty Resource Counsel to recommend qualified  
6 counsel. See 18 U.S.C. § 3005.”

7 6. The Defender requests this reconsideration, asking for appointment now and *nunc pro*  
8 *tunc* to October 27, 2023, before the Government charges MR. PITCHFORD with his death-eligible  
9 offenses, after having also consulted with Donald Knight, Federal Death Penalty Resource  
10 Counsel assigned to the entire case, as well as 9<sup>th</sup> Circuit CJA Case Budgeting Attorney Jennifer  
11 Naegele. Both support and recommend Oliver Loewy’s appointment as originally requested, to  
12 provide MR. PITCHFORD his 6<sup>th</sup> Amendment effective assistance of counsel to help him avoid the  
13 ultimate penalty of death in this case.

14 THEREFORE, the Federal Defender respectfully requests this Court reconsider her  
15 original motion to appoint Oliver Loewy as WAYLON PITCHFORD’s learned counsel *nunc pro*  
16 *tunc* to October 27, 2023 and grant such appointment as originally requested.

17 Dated: November 30, 2023

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19 HEATHER E. WILLIAMS  
20 Federal Defender  
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